IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

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In re:

ETOYS, INC., et al.,

Debtors.

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ROBERT K. ALBER, *Pro Se*,

Appellant,

v.

TRAUB, BONACQUIST & FOX, LLP, BARRY GOLD, MORRIS, NICHOLS, ARSHT & TUNNELL, LLP, THE UNITED STATES TRUSTEE and the POST-EFFECTIVE DATE COMMITTEE OF EBC I, INC., f/k/a eToys, Inc.

Appellees.

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Chapter 11

Case Nos. 01-0706 (MFW) through 01-0709 (MFW)

Civil Action No. 05-0830 (SLR)
Procedurally Consolidated with
Civil Action No. 05-0831

MOTION FOR A WRIT OF MANDAMUS AND FOR THE COURT TO RECONSIDER THE MEMORANDUM ORDER ISSUED BY CHIEF FEDERAL JUDGE SUE L. ROBINSON DISMISSING THE ALBER APPEAL WITH PREJUDICE ON THE GROUNDS THAT SAID MEMORANDUM ORDER IS ERRONEOUS AND WITHOUT THE REQUIRED MERIT TO WARRANT SUCH AN EXTREME SANCTION

STATEMENT

I, Robert K. Alber, *Pro Se*, Appellant (**case no. 05-0830**)/Cross Appellee (**case no. 05-0831**) (hereafter referred to as "ALBER" whether in the first or third person as appropriate grammar dictates), both cases having originated in Federal Bankruptcy Court, District of Delaware, Case No. 01-0706, the Honorable Chief Federal Judge Mary F. Walrath presiding (hereafter referred to as JUDGE WALRATH), do hereby Move this Court to reconsider and reverse the Memorandum Order (the ORDER) issued by Chief Federal Judge Sue L. Robinson (hereafter referred to as JUDGE ROBINSON), District of Delaware, on February 26th, 2007 (***Exhibit A***), which dismissed the ALBER Appeal *with prejudice*. ALBER affirmatively asserts that the Memorandum Order is erroneous and unjust for a plethora of reasons, some of which are listed below:

A) The fact that "*fraud upon the court*" is still being perpetrated upon the eToys Estate, the Court, and aggrieved parties (such as ALBER and HAAS), and the dismissal of the ALBER Appeal is an endeavor to "cover up" these matters. As such a *Writ of Mandamus* is justified to prevent "manifest injustice" that seeks to perpetrate great "materially adverse" harm to "parties of interest" under the "color of law" in violation of 18 U.S.C. § 3057(a). 18 U.S.C. § 1512 and fraud sections 152, statutory violations of 155 Fee Fixing and 157 that must be halted for the sake of the "integrity of the judicial process;" and,

B) where this Court (of itself and through the Clerk) appears to be complicit by providing for "sealed" letters of outside parties, without Motion or justification, while fabricating timeline issues to justify dismissal of a valid Appeal with thus far proven merit. Another justification for a *Writ of Mandamus*; and,

C) the Clerk of this Court did admonish ALBER for not serving 'Laser' Steven Haas (HAAS), refusing to file documents for ALBER until ALBER had submitted proof that HAAS had indeed been served (by ALBER) (**D.I. 46**). But then, after Mark Minuti, ESQ (hereafter referred to as MINUTI), Counsel for Barry F. Gold, eToys Plan Administrator (hereafter referred to as GOLD) filed a letter to the Court which

included the ALBER Opening Brief in its entirety (**D.I. 48**), the Clerk did enter the ALBER Opening Brief into the record (**D.I. 49**); and,

D) the Court/Clerk did then refuse to hold Appellees to the same standard of service, regarding the Motion To Dismiss (**D.I. 42**), which this Court did grant in dismissing the ALBER Appeal *with prejudice*. Another reason why a *Writ of Mandamus* is justified; and,

E) JUDGE ROBINSON does express confusion at one point in her Memorandum Order when she equivocates on the issue of what exactly ALBER filed: i.e. that she is not sure if the document in question is, indeed, the ALBER Opening Brief (**D.I. 49, at the bottom of page 3**. Specifically: "*On January 23rd, 2007, however, he filed a brief which appears to address the merits of his appeal.*"), whereas later on in her ORDER she specifically references the same document as the (ALBER) Opening Brief {**D.I. 49, pages 4-5, Item 4(c)**}. Specifically: "*ending with the untimely filing of his opening brief.*"); and,

F) JUDGE ROBINSON did reclassify and seal the ALBER Motion For An Extension Of Time (**D.I. 35**) absent a Motion from any party, and now includes an Attachment to said ALBER Motion without explanation as to what is included in said Attachment, the originating source of said Attachment, what controlling legal authority was used to enter said Attachment into the record, what Motion to include said Attachment was considered prior to the Court's decision, or even who requested that said Attachment be entered. This sort of 'cowboy' mentality on the part of the Court is surely grounds for a *Writ of Mandamus*; and,

G) the fact that this Court's Clerk did not Docket all filings related to the ALBER Appeal does directly prejudice ALBER unfairly, because the Court's incrimination that ALBER has not taken the ALBER Appeal seriously and has been, instead, attempting to delay Justice from being served, all such incriminations against ALBER would have been shown as false at the outset. While inclusion of all of the early filings related to the ALBER Appeal had not previously caused ALBER any

grave concern, not including said early filings have now become an issue since this Court did draw an erroneous conclusion which inclusion of these early filings may have precluded; and,

H) the fact that the so-called 'watchdogs of Justice' overseeing the Federal Bankruptcy System, the United States Trustee Program (hereafter referred to as UST), a self-policing Agency (which in and of itself is a recipe for corruption, and reeks of Soviet Union inter-governmental policies prior to perestroika), has not only failed in its 'mission' as 'watchdogs of Justice,' instead more accurately resembling 'self-serving lapdogs of the rich and powerful,' actively facilitates fraud and deceit upon the Court, and, ultimately, places ALBER, HAAS and others in a materially adverse situation (covered in detail later); and,

I) none of the Appellees complied with the Scheduling Order at all, nor did any of them even make any attempt to do so. This in defiance of the Ruling by the Honorable Federal Judge Kent A. Jordan (hereafter referred to as JUDGE JORDAN) that they do so (**D.I. 37**); the transcript of the October 16th, 2006 teleconference); and,

J) although Ronald Sussman, ESQ (SUSSMAN), objected to the Amended ALBER Designation Of Documents during the same teleconference (**D.I. 37**), whereupon JUDGE JORDAN did advise SUSSMAN to contact ALBER, SUSSMAN never complied with this order; and,

K) MINUTI (in **D.I. 52**), also mentioned that GOLD would be filing a Motion against the Amended ALBER Designation Of Documents **(D.I. 24)**, which is odd because the Amended ALBER Designation Of Documents (again, **D.I. 24**), was filed on September 19th, 2006, leading ALBER to conclude that this threat of a Motion by GOLD is but another attempt to delay these proceedings, and in contrast to Appellees assertions that they (the Appellees) wanted the ALBER Appeal concluded as quickly as possible; and,

L) when JUDGE JORDAN did set the date for the October 16th, 2006, teleconference, JUDGE JORDAN Ordered that all parties must attend with the names of those who were Ordered to be in attendance listed (**D.I. 32**); and,

M) which MNAT did respond to said Order (**D.I. 32**) on the morning of the teleconference (**D.I. 33**), confirming that all parties had been contacted (by MNAT) and confirmed that they would all attend; and,

N) coincidentally, the ALBER Motion For An Extension Of Time (**D.I. 35**) was then served upon the Court and all other parties just prior to the October 16th, teleconference with JUDGE JORDAN, but then, contrary to the Court's explicit Order that all parties attend, and despite the fact that all parties had affirmed they would attend (thus complying with JUDGE JORDAN's Orders), James L. Garrity, ESQ (a former Federal Judge, hereafter referred to as GARRITY, co-counsel for the currently defunct Traub, Bonacquist & Fox Law Firm (hereafter referred to as TB&F), and Steven E. Fox, ESQ (hereafter referred to as SFOX; with the currently defunct TB&F Law Firm), did *Fail To Appear*; and,

O) the fact that two (2) of the Appellees' Counsel, GARRITY and SFOX, were not in attendance (as Ordered by the Court) had to have been noticed by the Court, yet nothing was ever said or done to prevent this blatant *Contempt of Court* from occurring again in the future. This is very appropriate to mention now that the ALBER Appeal was subsequently dismissed *with prejudice* and ALBER (unfairly) found to be dilatory.

P) that on January 31st, 2007, ALBER received an email from MINUTI requesting that I join with Appellees in requesting a Scheduling Order (**Exhibit B**). ALBER responded the next day, February 1st, 2007, with the offer of an additional five (5) days delay, stating ALBER would join with Appellees in a Motion to the Court (**Exhibit C**). ALBER did not receive a reply from any of the Appellees, rather, on February 5th, 2007, ALBER was served, via email, a Motion For A Scheduling Order and a Letter to the Court from MINUTI. The ALBER response to MINUTI

on February 1st, 2007, is important for the reason that said ALBER response shows ALBER's willingness to act in good faith toward Appellees. Appellees bad faith is exhibited by their lack of response to any of ALBER's letters.

Despite the fact that said unethical actions did, and continue to, occur, JUDGE ROBINSON dismissed the ALBER Appeal with prejudice which is a sanction to be used only as a last resort: a decision which can hardly be equated with Justice considering that this harshest of sanctions was handed down **after** the ALBER Opening Brief was filed, and without the merits of the ALBER Appeal even being considered.

Additionally, JUDGE ROBINSON Granted Appellees' Motion To Dismiss the ALBER Appeal (**D.I. 42**), despite the fact that said Motion To Dismiss was not served on all parties, notably 'Laser' Steven Haas, and with no apparent knowledge that ALBER had filed the ALBER Opening Brief even though such occurrence is established by the Court record and reflected by Appellee GOLD in a letter to the Court dated January 23rd, 2007 (**D.I. 48**). It's interesting to note, here, that said 'letter' by GOLD (**D.I. 48**) refers to the ALBER Opening Brief correctly and submits said ALBER Opening Brief as 'Exhibit A,' yet the GOLD letter was entered into the Court Record **prior to** the ALBER Opening Brief (**D.I. 49**).

To be as explicit as possible, given the gravity of the situation and to further show how seriously ALBER takes the ALBER Appeal (and the Appellate Court process), ALBER will perform a comprehensive review of the errors and/or misstatements contained within the Memorandum Order by addressing each point contained therein separately.

Item 1: JUDGE ROBINSON makes the erroneous statement that there was a lawsuit filed against ALBER in Alaska by the Hamerskis. This is quite simply not true. Said 'fact' was not mentioned in any document filed in this case {unless it was referenced in the ***letter*** to the Court, filed under seal (**D.I. 45**), or in ex parte communications with the Court}.

Furthermore, the ALBER Motion to which JUDGE ROBINSON's Orders were drawn upon (the ALBER Motion For An Extension Of Time, **D.I. 35**) was Granted by JUDGE JORDAN,

on October 16th, 2006, and absent a Motion To Reconsider, JUDGE ROBINSON's Rulings regarding the above referenced ALBER Motion are not based in any legal theory or precedent ALBER is aware of. Another occurrence which ALBER was recently apprised of is that JUDGE ROBINSON, on February 20th, 2007 (according to the Pacer Docket record), has now Ordered this same ALBER Motion (**D.I. 35**) be filed 'under seal.' Absent a Motion requesting that JUDGE ROBINSON file a Motion 'under seal' ALBER cannot find under what legal authority JUDGE ROBINSON made this determination. And the Court adding an 'Attachment' to the ALBER Motion (as mentioned previously, in greater detail, in Item F, page 4 of this document) is another anomaly which JUDGE ROBINSON must justify.

If, in fact, the ***letter*** filed 'under seal' contained a request that said ALBER Motion (**D.I. 35**) be placed 'under seal,' then another set of legal questions arise: a) A Magistrate is not allowed to hear a Federal Appeal originating in a Federal Bankruptcy Court; yet, b) said Magistrate ruled that the aforementioned 'letter' be filed 'under seal;' and, c) said Magistrate was assigned to the ALBER Appeal by JUDGE ROBINSON (**D.I. 43**), which was in fact contrary to Federal Rules of Appellate Procedure; and, d) upon mention that a Magistrate was not allowed to hear the ALBER Appeal by MINUTI (**D.I. 48**), JUDGE ROBINSON did then reassign the ALBER Appeal to herself (on February 2nd, 2007); and, e) JUDGE ROBINSON did then, apparently, Grant the request in the letter to the Court and put language of a prejudicial nature (against ALBER) in the Court's Memorandum Order (**D.I. 55**); and, f) JUDGE ROBINSON did then have the District Court Clerk re-file the ALBER Motion (**D.I. 35**) 'under seal' (on February 20th, 2007, as is noted in the Pacer Docket list for **D.I. 35**); and finally, and perhaps most importantly, g) a request for a document to be filed under seal is only to be made in the form of a proper Motion.

ALBER can find no legal precedent for the above referenced actions by JUDGE ROBINSON, nor do any ethical justifications for said behavior come to mind. ALBER, here, asserts that only ex parte communications can be found to be responsible.

Item 2: The ALBER Appeal was actually filed on October 13th, 2005, within the 10 day limit for filing a Notice Of Appeal Intent (JUDGE WALRATH's Opinion & Orders were

handed down on October 4th, 2005), but was delayed by a flood of Motions by Appellees (12-14 in all) seeking to dismiss the ALBER Appeal and the HAAS Appeal along with Motions To Strike Documents filed in connection with said Appeal. Said 'Motions by Appellees,' along with ALBER's Response to the Appellees' Motions (**eToys D.I. 2353**), were heard by JUDGE WALRATH on December 1st, 2005, with ALBER in personal attendance, whereupon all of the Appellees' Motions were denied. Actions by Appellees in this regard, along with the Bankruptcy Court's not transmitting the ALBER Appeal, caused the ALBER Appeal to be delayed by almost two (2) months. Res Judicata issues also exist regarding Motions filed by Appellees calling for documents filed by ALBER to be struck from the record, and Appellees' Motions To Dismiss. Yet because of the District Court not entering **all** of the Dockets regarding the ALBER Appeal into the District Court Docket record, this District Court is now of the erroneous opinion that ALBER is not taking the ALBER Appeal seriously. To prove this point, examination of the ALBER Response (**eToys D.I. 2353**) in its (lengthy) entirety clearly shows the enormous amount of research and forethought applied by ALBER; all without any formal, higher education (in contrast to the years of legal education of those ALBER has been fighting in Court, and elsewhere, these last 6+ years). If, after digesting and considering the time and effort put forth by ALBER in composing the ALBER Response this Court is still under the illusion that ALBER is not taking the ALBER Appeal seriously, please state the reasons for arriving at said conclusion.

Item 3: Despite the inclusion of the transcript from the teleconference held on October 16th, 2006, JUDGE JORDAN presiding (**D.I. 37**), along with inferences within the Memorandum Order that the Court did read and comprehend said transcript, JUDGE ROBINSON errs by not acknowledging the fact that JUDGE JORDAN did state that ALBER would be given more time to recuperate from the mental exhaustion and extreme stress {brought on by harassment tactics by associates of the Appellees as outlined in detail in the ALBER Motion For An Extension Of Time (**D.I. 35**)} if ALBER were to request said extension. ALBER did so in a letter to Appellees on November 16th, 2006 (**Exhibit D**), but then fell more seriously ill (with the result being invasive, cranial surgery) and failed to submit the letter, or ALBER's request, to the Court as required. The fact that JUDGE ROBINSON is unfamiliar with JUDGE JORDAN's Rulings during the October 16th, 2006 teleconference,

along with other inconsistencies by JUDGE ROBINSON (as detailed elsewhere within this document), shows that either; a) JUDGE ROBINSON is unfamiliar with events/documents associated with the ALBER Appeal; or, b) the Memorandum Order was crafted by a person(s) either prejudiced against the ALBER Appeal; or, c) unfamiliar with the ALBER Appeal; or d) JUDGE ROBINSON refuses to let facts stand in the way of her expressing unfounded, erroneous 'opinions' in Memorandum Orders.

Later on in '**Item 3**' JUDGE ROBINSON does express her confusion as to whether or not I, ALBER, even filed an Appellate Brief. For the document in question is, indeed, the ALBER Opening Brief (**D.I. 49**), which even the most cursory examination clearly shows. This is clear proof that JUDGE ROBINSON signed the Memorandum Order Dismissing the ALBER Appeal without even considering the merits of said ALBER Appeal. For had she (JUDGE ROBINSON) performed an examination of the title page of the ALBER Opening Brief, it would have been abundantly clear that said document was the ALBER Opening Brief.

Item 4: Interestingly, JUDGE ROBINSON's choice of words in **Item 3**, which ALBER addresses above, clearly shows that JUDGE ROBINSON did not act in accordance with the authority she (JUDGE ROBINSON) references in her Memorandum Order {Poulis V. State Farm Fire and Cas. Co., 747 F.2d 863 (3d Cir. 1984)} when she (JUDGE ROBINSON) states she is ignorant of the contents of the ALBER Opening Brief. For such would have precluded her from issuing a ruling dismissing the ALBER Appeal with prejudice. Instead, JUDGE ROBINSON refuses to take into account ALBER's ill health (being disabled prior to the onset of the eToys Bankruptcy case and to the present), invasive cranial surgery (on December 1st, 2006), several visits to a hospital emergency room, and a three (3) day stay as an inpatient as a meritorious claim or defense. JUDGE ROBINSON brushes all of this aside and attributes ALBER's tardiness to "willful or bad faith" and imposes an extreme sanction.

Item 4(a): While JUDGE ROBINSON acknowledges that I, ALBER, "was an effective advocate in the bankruptcy proceedings," and that ALBER is *pro se*, JUDGE ROBINSON fails, or refuses, to come to the obvious conclusion that something serious must have happened to explain why ALBER, is now having problems meeting deadlines. A cursory examination of

the ALBER Certificate of Service (**D.I. 46**) would have revealed to her that ALBER was (and still is) suffering from the after effects of a serious operation (which medical specialists tell ALBER will take many months to fully heal), along with debilitating mental exhaustion and extreme stress {as is outlined in **D.I. 35**}.

Additionally, as ALBER rushed to California from Arizona in anticipation of a hurriedly scheduled operation (by the specialist performing the operation, who stated to ALBER that the operation should be done immediately), ALBER requested of HAAS that HAAS notify the Court of ALBER's serious medical condition and impending surgery. HAAS has assured ALBER that he (HAAS) did so by mail to the Court, yet no acknowledgement of receiving said correspondence from HAAS to the Court has ever come to light. As the Court may state, upon reading this incrimination, that the Court does not accept, post or file such documents, ALBER queries the Court as to why the Court would accept, and then file, under seal, a *letter*, and then add an Attachment to one of ALBER's Motions (which ALBER must assume was requested in the letter).

Item 4(b): On the contrary. Harassment and unethical conduct by Appellees and Appellees' associates have directly delayed ALBER from completing the ALBER Appeal by endangering ALBER's health as is outlined, in detail, in **D.I. 35**, which is extensive but still does not include all of the information/evidence ALBER has at his (ALBER's) disposal.

Item 4(c): Although JUDGE ROBINSON is aware of ALBER being pro se (hence not an attorney), here JUDGE ROBINSON belittles ALBER for not being completely familiar with Federal Rules of Appellate Procedure and thus not complying with said Rules in ALBER's first attempt at 'record designation.' JUDGE ROBINSON also does not, here, mention that ALBER's second attempt at 'record designation' was successful and in compliance with Court procedure. But then, contrary to earlier language in the Memorandum Order, JUDGE ROBINSON does here acknowledge that the document in question was, in fact, known by her to be ALBER's Opening Brief.

Item 4(d): In ALBER's opinion, the voluminous, well thought out and well researched material collated and then contained within the ALBER Response to Appellees' Motions To Dismiss and Motions To Strike (**eToys D.I. 2353**), the ALBER Motion For An Extension Of Time (**D.I. 35**) and the ALBER Opening Brief (**D.I. 49**) clearly show that ALBER has an inordinate amount of respect for the appellate process.

Item 4(e): ALBER received the Magistrate's Order from the Court on January 11th, 2007, not January 5th, 2007, as JUDGE ROBINSON states. Therefore, I, ALBER, responded within 7-8 days with the ALBER Opening Brief: reasonable under the circumstances. For this reason alone the ALBER Opening Brief must be accepted by this Court and the ALBER Appeal allowed to continue.

Item 4(f): A factual error contained within this 'Item 4(f)' perhaps explains why this Court came to an erroneous conclusion in regards to MNAT receiving harsher sanctions, as the ALBER Appeal calls for. The UST did not participate in the settlement agreement between Goldman Sachs and eToys. This matter was handled by eToys itself, which, with MNAT as eToys Debtor's Counsel while having an ongoing, actual undisclosed conflict with Goldman Sachs, ALBER asserts would have necessitated harsher sanctions against MNAT. Especially with JUDGE WALRATH's ruling that MNAT committed intentional fraud upon the Court and the eToys Estate (whom MNAT, as Debtor's Counsel, was sworn to defend above any other entity). Wherever, or from whom, the Court learned that the UST played a part in the eToys Settlement with Goldman Sachs regarding Goldman Sachs pre-petition employment by eToys, is undeniably an unreliable source. Or, again, the Court, or whoever crafted the Memorandum Order is not at all familiar with the case, or wishes to give credit to an Agency of the Justice Department (sic) that deserves none.

THE ALBER APPEAL DEMANDS "ADJUDICATION UPON THE MERITS"

Not once in JUDGE ROBINSON's Memorandum Order is it stated, or even alluded to, that JUDGE ROBINSON considered the merits of the ALBER APPEAL, except to state:

"The likelihood that Mr. Alber can successfully challenge the bankruptcy court's exercise of its broad discretion as to such matters is minimal."

In ALBER's opinion, the only purpose said 'opinion' of JUDGE ROBINSON can serve is to make her job superfluous in matters of Bankruptcy Appeals.

But to deal with one reason why JUDGE WALRATH's Opinion/Orders should be modified, and what ALBER believes ultimately caused JUDGE WALRATH to impose such light sentences in contrast with her earlier, unrelenting quest for the Truth to emerge:

Obstruction Of Justice by the UST

1. In the eToys bankruptcy case, allegations of Perjury, Fraud, False Oaths, Collusion to Defraud, Scheme to Fix Fees, False Declarations, Intimidation of Victim/Witness and Conspiracy to Circumvent the Code were made by ALBER, eToys Court approved liquidation entity Collateral Logistics, Inc. (hereafter referred to as CLI), and 'Laser' Steven Haas (hereafter referred to as HAAS), the CEO/President/Sole Shareholder of CLI, against the Appellees (MNAT, TB&F and GOLD). After the allegations were made, they were affirmed (i.e. admitted to) by the offending parties through various Court documents (many filed in the period surrounding January 25th, 2005), in depositions, and on the stand, under oath, at the resulting Trial held March 1st, 2005. Time and again, the Appellees sought to explain away their unlawful, unethical behavior by reason of inadvertent neglect and/or oversight.

2. The violations are by GOLD, who was originally hired by eToys as "*wind down coordinator*" on May 21st, 2001, at the behest of a referral by TB&F (the Court approved counsel for the Official Committee of Unsecured Creditors), and collaboratively assisted by the Court approved eToys Debtor's Counsel: Morris, Nichols, Arsht & Tunnel (hereafter referred to as MNAT).

3. At the time of hiring, GOLD, as eToys '*wind-down coordinator*,' was the sole authority in running post-petition eToys. GOLD later assumed the position of eToys CEO/President: still with the 'sole' authority to make decisions on behalf of eToys, and again

with the support and approval of TB&F and MNAT. On or about December 1st, 2002, GOLD was appointed to the position of (confirmed) Plan Administrator, which was again accomplished by surreptitious endeavors to circumvent the Code by MNAT, TB&F and GOLD (which facilitated GOLD being appointed Plan Administrator). To reiterate, when the discovery of the non-disclosures was found, and the offenders (Appellees) where confronted with these issues (through Court filings), Appellees attempted to explain away their unlawful, unethical actions using the same, lame excuses of ignorance and/or involuntary disregard for the Code and Rule of Law.

4. The '*non-disclosure*' of '*conflicts of interest*' that are '*materially adverse*' to '*persons aggrieved*' and '*parties of interest*' are abundantly documented by irrefutable evidence as provided by court dockets and other official records that remain insurmountable.

5. However, the statutory violations have been assisted by clearly erroneous '*findings of facts*' and '*conclusions of law.*' As stated earlier, the allegations made by ALBER and HAAS resulted in numerous 'admitted' 'failures to disclose' by Appellees.

6. At a Court hearing on February 1st, 2005 (**eToys D.I. 2191**, the transcript of that hearing), ALBER's request of the Court to depose GOLD, TB&F and MNAT was Granted, resulting in the Depositions taking place on February 9th, 2005, UST representative Mark Kenney, ESQ (hereafter referred to as KENNEY) attended the Deposition.

7. On February 15th, 2005, the UST filed a Disgorgement Motion (**Exhibit E, eToys D.I. 2195**). With no equivocation, the facts outlined in the UST Motion proved, beyond any shadow of a doubt, that multiple non-disclosures did occur, while also showing that these 'non-disclosures' were '*materially adverse*' (**eToys D.I. 2195, Item 22**), and that the UST had forewarned the parties not to engage in replacing key personnel of the Debtor (eToys)(**eToys Docket 2195, Items 19 & 35**).

Other, equally damning, relevant points in the UST Disgorgement Motion (**D.I.2195**):

a. Item 2 states that the UST is charged with Oversight per 28 USC § 586.

b. Item 2 also refers to the UST as a "watchdog." (i.e. per the Janet Reno Reform Act of 1994.)

c. Item 3 states that the UST has standing per 11 USC § 307.

d. Item 5 states that Michael S. Fox, ESQ, one of the principals of TB&F, affirmed no conflicts in a 2014 Disclosure.

e. Item 6 states that GOLD was hired on or about May 21st, 2001, as "*wind down coordinator*."

f. Item 9 states that in January, 2002, the Official Creditors Committee applied to expand the scope of TB&F's retention to include representing the eToys Estate in the eToys v Goldman Sachs litigation filed in New York Supreme Court and that [MFOX] submitted a 2014 Affidavit affirming the continuing 'disinterestedness' of TB&F.

g. Item 10 states that the Plan was confirmed on November 1st, 2002.

h. Item 12 states professionals have a duty to fully disclose any and all relationships/connections.

i. Item 12 also states Local Rule 2014-1(a) disclosure is a continuing duty.

j. Item 12, again, states a [single] violation is independent basis for disgorgement and even disqualification.

k. Item 13 states that "The court and parties in interest police conflicts through mandatory disclosure of relationships un FED.R.Bankr.P. 2014(a)."

l. Item 14 states a professional "may not pick and choose which connections to disclose, or which connections to ignore as unimportant or trivial."

m. Item 14 also states parties should not be required to search or ferret out violations; that disclosures should be complete.

n. Item 15 states that even if there is no harm done, disqualification can occur.

o. Item 15 reflected upon the AC&S Del. decision that such failures to disclose should be punished as severely as "fraud upon the court."

p. Item 15 also reflected that non-disclosures did not have to be "intentional" for the Court to rule on the disinterestedness issue.

q. Item 17 states that by not disclosing the connections between TB&F and GOLD, that TB&F breached its [fiduciary] duties.

r. Item 17 also states that TB&F compounded the violations when it affirmatively continued to falsely state the facts in its (TB&F's) supplemental 2014 affidavit in January, 2002.

s. Item 18 remarked upon the Bonus Sales Bankruptcy Case, showing prior knowledge that disclosure was required, and where the parties admitted discussing the fact that the 'non-disclosures' were now public, but that the [perpetrating] parties decided to remain silent.

t. Item 19 states that the members of TB&F are [vastly] experienced practitioners in bankruptcy matters, and TB&F is not a stranger to the disclosure/reporting process.

u. Item 19 also states that the UST specifically remarked about the parties being forewarned [against] engaging in replacing Debtor (eToys) controlling authorities as the UST stated "More significantly TB&F was specifically aware in this matter, from discussions with the [UST], of the UST's concerns about replacing corporate officers with individuals related to any of the retained professionals in the case."

v. Item 19, again, states that the placement of GOLD was not an accident, but directly per the request of TB&F, and that the non-disclosure of TB&F's connections with GOLD was deliberate.

w. Item 21 stated that TB&F's 'failure to disclose' directly, and 'seriously,' affected the integrity of the judicial process, and that TB&F's continued employment was rendered inappropriate.

x. Item 22 states that the connections between GOLD and TB&F were 'materially adverse,' and that TB&F was no longer qualified under 101(14).

y. Item 23 states that TB&F and GOLD had competition of economic interest against [fiduciary responsibilities] that would tend to diminish estate values.

z. Item 25 states that GOLD's employment impaired TB&F, that there was "no independent DEBTOR v. creditor relationship," and that it was "unrealistic to expect that the numerous connections between GOLD and TB&F would not influence the interactions between TB&F and the Debtor and TB&F's ability to evaluate the Debtor's decisions and actions dispassionately." That TB&F and GOLD had clear [self interest].

aa. Item 26 states that the UST was not made aware of the connections between TB&F and GOLD until 3½ years after TB&F was retained as Committee Counsel.

bb. Item 29 states that in deciding if "fraud upon the court" has occurred, the Supreme Court has always used the determination of whether or not the alleged fraud "harmed the judicial process."

cc. Items 30-31 further clarifies what constitutes "fraud upon the Court" when it states [W]here a judgment is obtained by fraud perpetrated by an attorney ---such is "fraud upon the court" and it is done by attorney's who are "officers of the court" and "an unconscionable plan or scheme to improperly influence the court or interfere with the judicial machinery performing a task of impartial adjudication, as by preventing an opposing party from fairly presenting his case or defense."

dd. Item 32 applies directly to the ALBER Appeal dismissal as it cites the Pearson case: "[W]hatever safeguards counsel may realize in remaining silent "does not" extend to deliberate efforts to mislead."

ee. Item 33 states that "in this case, as in Pearson, a grave miscarriage of justice took place."

ff. Item 35 reiterates the statement the UST made in Item 19 where the parties were "forewarned" in specific discussions with the UST office "that the replacement officers not be related to any of the professionals employed in the case."

gg. Item 35 also states "This, it is respectfully submitted, is all of the intent needed to demonstrate that TB&F's Rule 2014 disclosure violation was a fraud upon the court."

hh. Item 36 remarks that "TB&F Rule 2014 violation harmed the integrity of the Court and the judicial process. In this case, it also undermined public confidence in the integrity of the bankruptcy process."

ii. Item 38 states that the eToys PEDC can hire anyone it wants to.

jj. Item 39 states TB&F should be disgorged $1.6 million [as a sufficient deterrent].

kk. The UST finally remarked in Item 39 that "anything less would simply be viewed as a cost of doing business."

8. But then, on February 24th, 2005, just nine (9) days after filing their (the UST) Disgorgement Motion and five (5) days prior to the Trial which was to be conducted by ALBER, the UST filed a Stipulation To Settle (with TB&F) (**Exhibit F, eToys D.I. 2201**).

9. As submitted to the Court, the UST Stipulation To Settle (with TB&F) effectively covered up any other offenses alleged by engaging in illegal contract obligations by stating;

> *"**WHEREAS** the United States Trustee will not seek to compel any additional disclosures".*

10. Such abusive contractual statements are in direct violation of **28 USC 586(A)(3)(F)** as well as Oath of Office and **18 USC 3057(a).** The statutory abuse also laid the flawed foundation for JUDGE WALRATH's OPINION to state that there was no perjury (even though more than 20 separate counts have occurred by more than half a dozen parties with continued, unaddressed perjury matters being stricken or expunged due to the "*doctrine*" of "*scienter*" as incidents of "*unclean hands*" are overwhelmingly documented, which the UST Stipulation To Settle (**D.I. 2201**), signed by KENNEY, seeks to utilize in abating statutory disclosure requirements.) An example of perjury not addressed is the simple matter of GOLD's PLAN Declaration (**eToys D.I. 1312**) stating that the PLAN was negotiated in "*good faith*" with "*arms length*" negotiations between the DEBTOR (GOLD) and Creditor (TB&F), which was impossible to accomplish as TRAUB did testify on the Stand, at the Trial held on March 1st, 2005, during direct examination by the Court, (**eToys D.I. 2228,** the transcript of that hearing) that TB&F had paid GOLD four (4) separate payments of $30,000 each from January, 2001, through May, 2001 (which is both *pre* and *post* petition), only to halt such payments by TB&F to GOLD when GOLD became the "*wind-down coordinator*" for the DEBTOR at $40,000 per month.

11. The above admittance by TRAUB, under oath, meets all three (3) requirements for proof of the violation of the **Janet Reno Reform Act of 1994 18 U.S.C. § 155: Fee Fixing**. Which is, of itself, a misdemeanor that becomes a full-blown list of felony violations when it is

taken into account that said acts were assisted by the collaborative endeavor of MNAT, TB&F and GOLD, and others to circumvent the Code, after being forewarned by the UST not to engage in such acts (**D.I. 2195, Items 19 and 35**). Not only is conspiracy a probable, successful prosecution, RICO also has substantial foundation.

12. The same day the UST filed the UST Stipulation For Settlement (**eToys D.I. 2201**), February 24th, 2005, the UST filed a Motion To Shorten Time, To Limit Notice And To Approve Form And Manner Of Notice In Connection With Motion To Approve Settlement… (**Exhibit G, eToys D.I. 2202**). Of note is the fact that the UST wants to limit the service of who receive the UST Disgorgement Motion and the UST Stipulation For Settlement only to those who are now Appellees; MNAT, GOLD, the eToys PEDC, TB&F, CLI/HAAS, ALBER and Gary L. Ramsey (another eToys shareholder who attended the 2005 eToys Court Hearing with ALBER). The UST's reasoning was that none of the other 'aggrieved parties' in the eToys Bankruptcy Case would have been interested anyway.

13. ALBER vehemently disagrees with the UST in this regard, asserting that perhaps all other 'aggrieved parties' and 'parties of interest' in the eToys Bankruptcy Case (creditors, shareholders, bondholders, the SEC, the U.S. Attorneys Office…) would have been interested had they (the above named 'aggrieved parties') been notified. In fact, the flood of responses may have been overwhelming and the March 1st, 2005, Trial before JUDGE WALRATH may have resulted in a 'standing room only' situation. By not notifying these other 'aggrieved parties' of the serious level of fraud and corruption in the eToys Bankruptcy Case by those administering the eToys Estate, Justice was likely forestalled, leaving only a couple of *Pro Se*'s to argue what was/is arguably a high profile, complicated, mega bankruptcy ($470+ Million) case in Federal Court. ALBER contends that this Motion (**D.I. 2202**), with the included, limited service to aggrieved parties, was but one more factor in what many consider a cover-up of monstrous proportions (encompassing the UST, Debtors Counsel, the Official Creditors Committee and the Plan Administrator).

14. Furthermore, in Item 13 of the UST Disgorgement Motion (**D.I. 2195**), the UST states emphatically that "The court and parties in interest police conflicts through mandatory disclosure of relationships under FED.R.Bankr.P. 2014(a)." So, using the UST own words,

what the UST committed by causing only a very few parties to receive notice of alleged, and admitted, criminal violations of FED.R.Bankr.P. 2014(a), was nothing short of an engineered cover-up by depriving said "parties in interest" of crucial information. For how is what the UST did, in depriving 'parties in interest' of crucial information concerning Bankruptcy disclosure matters, any different than TB&F & GOLD's actions by their failures to disclose their close connections and disabling conflicts of interest?

15. Item 26 states that "Evidence of the connection between TB&F and GOLD in this case was not brought to the attention of the UST until more than 3 ½ years after this court approved TB&F's employment as Committee counsel." A footnote from 'Item 26' states that "A professional may not leave the court or other parties in interest to search the record for a professional's relationships or otherwise to ferret out those relationships within a single case." In the Bonus Stores Bankruptcy Case (hereafter referred to as BONUS, **District of Delaware, 03-12284**, JUDGE WALRATH presiding), KENNEY filed an objection to the hiring of ADA **(Exhibit H, BONUS D.I. 102)** and an objection to the hiring of TB&F **(Exhibit I, BONUS D.I. 103)**. KENNEY's objections (in both *D.I. 102 & D.I. 103*) reveals that he (KENNEY) knew of the connection between GOLD and TB&F at that time. Therefore, the UST/ KENNEY did not have to look anywhere. KENNEY had filed objections for the UST detailing the connections between GOLD and TB&F in July, 2003.

16. More incriminating for the UST and KENNEY is that they (the UST and KENNEY) knew of the actual, disabling conflict of interest between GOLD, TB&F and Fleet Bank in July, 2003, yet remained silent in the eToys Bankruptcy Case where TB&F began pursuing litigation against Fleet Bank, on behalf of Debtor eToys, starting in May, 2003, with GOLD as eToys Plan Administrator. Again, the UST and/or KENNEY did not have to look anywhere. KENNEY had filed objections for the UST detailing the connections between Fleet, GOLD and TB&F/TRAUB in July, 2003.

17. Also of relevance in the BONUS case is the relationship detailed by the UST/KENNEY between TB&F and GOLD. For Item 38 states that the eToys PEDC can hire anyone it wants to. What the UST always refused to comment on, even though ALBER raised the subject repeatedly in both Court filings and at the March 1st, 2005, Trial, and the UST

affirmed ALBER's contentions (in Item 9, above), was that TB&F was representing the eToys Estate in the IPO litigation in the New York State Supreme Court against Fleet Bank at the same time it (TB&F) had an undisclosed, disabling conflict of interest with Fleet Bank.

18. While it's true that ADA was not involved in the eToys Bankruptcy Case, the two (2) sole principals of ADA were (TRAUB and GOLD). But for anyone to read the language in the UST (KENNEY) Disgorgement Motion (**eToys D.I. 2195**) and/or the UST (KENNEY) Objections in the BONUS Bankruptcy Case (**BONUS D.I. 102 & 103**), digesting the UST's own interpretation of the Rules and Code governing disclosure, disinterestedness, and what constituted conflict of interest, and come to the conclusion that neither TB&F and/or GOLD committed any crimes is either folly or intentional ignorance. Once again, the UST/KENNEY did not have to search or ferret out any information from any other cases to locate any of this information: they only had to be conscious.

19. While it may be claimed that notifying the eToys PEDC of said acts [of a criminal nature involving non-disclosure] was sufficient, since they (the eToys PEDC) represented the Creditors and Bondholders, it must be noted that; a) TB&F represented(s) the PEDC; and, b) MNAT had/has a disabling, undisclosed Conflict Of Interest with Mattel Toy Co. (who served on the PEDC) and Fisher-Price Toys (a wholly owned subsidiary of Mattel who also served on the PEDC); and c) the eToys PEDC showed no interest in how the eToys Estate was/is being administered (which is why ALBER listed the eToys PEDC as Appellees); and all of the Appellees (MNAT, GOLD and TB&F) had/have undisclosed Conflicts Of Interests with **Bain Capital** (who purchased most of etoys, including the name and the virtually new, state-of-the-are Blair Fulfillment Facility in Blair, Virginia) for a pittance in the eToys Bankruptcy Auction which was conducted by TRAUB.

20. Of great importance is the fact that there was not any mention of MNAT in the UST Motion To Disgorge, nor did the UST ever condemn MNAT for what JUDGE WALRATH later Ruled to be 'intentional fraud upon the Court and the [eToys] Estate.' For it was revealed by ALBER (**eToys D.I. 2178**) that MNAT was representing Goldman Sachs and G.E. Capital in the Finova Bankruptcy Case (District of Delaware, 01-0697, filed the same day as the eToys Bankruptcy Case in the same Delaware Court, hereafter referred to as FINOVA),

while at the same time Goldman Sachs and G.E. Capital (both investment banks) were materially adverse to the eToys Estate (whom MNAT represented as Debtor's Counsel). Of particular, relevant note is that KENNEY and Frank Perch (hereafter referred to as PERCH) represented the UST in FINOVA, and both represented the UST in the eToys Bankruptcy Case. This is probably why KENNEY and PERCH always refused to comment on MNAT's failures to disclose; because they (KENNEY & PERCH) could be found to be either incompetent or criminally liable for such negligence. And, in ALBER's opinion, the UST's continued silence regarding the severe criminal violations by MNAT can be seen as Obstruction Of Justice, especially when considered in conjunction with the UST's lax treatment of TB&F and GOLD, and then joining with the Appellees in the ALBER Appeal.

21. More of this pattern is seen in one of ALBER's most recent letters to the UST hierarchy: (**Exhibit J**). This letter documents situations in other cases which are [criminally] relevant to the eToys Bankruptcy Case, an Affidavit by Johann Hamerski detailing KENNEY's phone confession (to Hamerski) that he (KENNEY) did (in KENNEYS mind) knowingly file false documents in the eToys Bankruptcy Case, and information ALBER had uncovered from deep within the UST website which allows ALBER to state, with no reservations, that the UST Program, under cover of their own self-policing internal policies, knowingly and willfully conceals crimes against Bankruptcy Estates by UST employees.

22. The extremely relevant point in **Items 14 & 15**, above, is that there was more than sufficient motive on the part of Appellees and the UST to keep awareness of the allegations against those parties administering the eToys Estate from becoming general knowledge among all of the other [eToys] 'aggrieved parties' and 'parties of interest.'

STATUTORY VIOLATIONS OF SERIOUS CONSEQUENCE NOT YET ADDRESSED

23. The scheme to dismiss the ALBER Appeal adversely affects parties by facilitating continuous, ongoing, statutory violations.

24. Whereupon the Court (JUDGE WALRATH) did issue an Opinion on October 4th, 2005 (**eToys D.I. 2319**) with a corresponding Order that approved the UST February 24th, 2005, Stipulation to Settle (**eToys D.I. 2201**) by KENNEY, which used many of the UST conclusions as a basis.

25. The OPINION continued along illicit avenues of statutory application, stated no referral to the United States Attorney would occur, that no perjury occurred by GOLD who was "**not**" required to apply as (post-petition) "*wind down coordinator*" by **327(a), or** any law, in direct violation of **18 USC 3057(a)** and the **Judicial Canon of Conduct 3(B)3**. No honorable review of the facts at hand, in compliance with the Code and precedents established by the 3rd Circuit, can come to the same [erroneous] conclusions.

26. The illegitimate foundation the OPINION infers gives the [precedent setting] impression that the System, the Court and the UST will disregard any abuse of process for solely personal reasons. Applied to the present, this would include this Court's erroneous statement that ALBER did not submit his brief 'on time,' which is substantiated by false testimony which in and of itself warrants an investigation. It is a simple premise: They must, at all costs, using any and all means of power, influence, and/or persuasion, endeavor to halt these items from being addressed (by any authority with integrity above reproach) or the offending parties will, at the barest of minimum, be disbarred.

27. These endeavors to "*cover up*" by dismissing "*good faith*" parties (ALBER) without "*adjudication on merits*" violates the very "**Poulis**" standard the Court seeks to dismiss the ALBER Appeal on. There are uncommon, undeniable, illustration(s) of manipulation which apparently disregards the fact that "*covering up*" these affairs, to assist established colleagues also becomes complicit by framework with "*unclean hands*" in willful, premeditated "*fraud upon the court*" causing "*materially adverse*" harm not only to ALBER, but also upon other shareholders and the Public as a whole, through direct butchery of the Integrity of the System and the Public's faith in the Courts.

28. Thus, it is ALBER's sincerest hope and desire that ALBER may encounter the aforementioned 'authority with integrity above reproach' who will take on what some

(including ALBER) may characterize as a 'good ol' boys club' within the Delaware Bankruptcy Court System.

Standard of Review

29. The right to Writ of Mandamus is stated as follows;

TITLE 28 > PART V > CHAPTER 111 > § 1651

§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction

30. The function of the Writ of Mandamus can be utilized when Justices refuse to address matters of Recusal. A Writ of Mandamus is "*drastic remedy that a court should grant only in extraordinary circumstances in response to an act amounting to a judicial usurpation of power*". In re: Mwanze, 242 F.3d 521, 524 (3d Cir. 2001). A Writ for Mandamus may not be used to circumvent the appeal process. As this is within an appeal concerning erroneous "*finding of facts*" that is complicit with erroneous " *conclusions of law*" with ongoing Perjury violations, assisting "fraud upon the court" seeking to dismiss "*erroneously*" with "*prejudice*" the standard is not only met, it is exceeded abundantly when both the UST and the Court certify unlawful contract clauses that permit circumvention of "*unambiguous*" statutory provisions, such as "the United States Trustee will not seek to compel any additional disclosures" (D.I. 2201).

SUMMARY

ALBER filed the ALBER Appeal Brief 'on time.' Even if "arguendo" the Clerk/Court stated it was a day late or several days late, such is not sufficient justification for dismissal without "adjudication upon merits," of which no attempt was made according to JUDGE ROBINSON's Memorandum Order. Another point worth reiterating is that ALBER responded

to the Magistrate's Scheduling Order within only 7-8 days of receiving the Scheduling Order from the Court. For it must be noted that all of the 'professionals' receive documents and/or rulings from the Court via email and/or fax, whereas pro se ALBER receives the same documents and/or rulings from the Court via regular (snail) mail. And what with ALBER residing on the west coast, it takes from 4-7 days to receive said documents from the Court. So with ALBER receiving the Magistrate's Scheduling Order on January 11th, 2007, ALBER had only 7 days to comply with said Order. Another case in point is that ALBER did not receive the Memorandum Order from the Court dated February 27th, 2007 until March 3rd, 2007.

For the Court and UST were served with the ALBER Opening Brief, by hand, on January 19th, 2007, which was shown on the ALBER Certificate Of Service (**D.I. 50**). So the Clerk/Court's statement that the ALBER Opening Brief was filed on January 23rd is erroneous. If, however, the Clerk/Court is using the date ALBER served HAAS, because of the deficiency of notice, then the Appellees' Motion To Dismiss, which the Court Granted in dismissing the ALBER Appeal with prejudice, has not been served to this day according to the Pacer Docket records.

And if the circumstance outlined above is true, then this Court did Grant a Motion To Dismiss which was never correctly (i.e. legally) served, and which the Court did punish ALBER for the same infraction/neglect.

Given that ALBER is pro se, and everyone who opposes ALBER is a legal professional, why is ALBER held to such a higher standard (being ignorant of most all things legal until this eToys case) than legal professionals who do this for a living?

And while it is surely apparent that ALBER does not regard the UST as 'watchdogs of Justice,' ALBER does want it known to all that such was not always the case. For ALBER's first phone call to an 'authority figure' in the eToys Bankruptcy Case was to KENNEY in early 2002, whereupon ALBER felt graced to be conversing with a person ALBER assumed (at the time) to be a person of integrity who would examine the evidence ALBER presented to him (KENNEY) and then, after considering said evidence, using the power vested in him/his office to stop the evil-doers in their tracks. ALBER's current, non-existent faith in the UST (in

Delaware) comes from direct, personal contact over a period of approximately 5 years. Thus, ALBER's opinion has been formed over quite some time and is hardly a 'rush to judgment' as some may [mistakenly] assume.

That said: ALBER has had the opportunity of meeting several persons in the UST Program who exhibit honor and integrity; unfortunately for ALBER (and eToys) none of them worked in the Delaware office.

CONCLUSION

The Memorandum Order by JUDGE ROBINSON is erroneous, and with no legal foundation; that is clearly shown. But the root cause for the time being wasted by the Court stems from problems endemic within the Bankruptcy system itself: specifically corruption within the UST Program (an Appellee in the ALBER Appeal). These are matters which this District Court can, and should address in considering the ALBER Appeal. But if the ALBER Appeal is not addressed, then the fraud and corruption are left to continue unabated, with the offending parties now given a 'green light' since all of the information brought before this Court by ALBER and HAAS would be allowed to lapse.

And allowing any or all the above listed actions to occur in her Court shows either a confused state of mind on the part of JUDGE ROBINSON, or the collaboration of people other than JUDGE ROBINSON in crafting the ORDER whereupon JUDGE ROBINSON did then sign the ORDER without confirming its veracity: either of which mandates a judicial review of JUDGE ROBINSON's fitness and/or capacity to serve on the bench. For dismissing a Federal Appeal '*with prejudice as an extreme sanction*' is a grave matter.

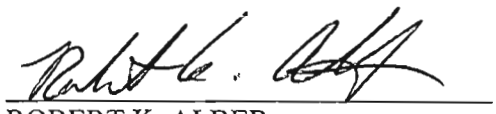
For those who still insist that ALBER was tardy in filing the ALBER Opening Brief, please consider the following. ALBER made his initial purchase of 1,000 shares of eToys stock on December 8th, 2000, with proceeds from the final disposition of ALBER's 1997 work-related injury which caused ALBER to be disabled. Upon hearing, from other eToys shareholders, that foul play may have been responsible for the loss of ALBER's investment (meager as it may have been by others' standards), ALBER began researching the background

of the eToys Bankruptcy. Confirming, to ALBER's satisfaction, that foul play was indeed afoot, ALBER proceeded to challenge the people/entities charged with overseeing the eToys Bankruptcy in Federal Bankruptcy Court. This culminated in a generally favorable Opinion from JUDGE WALRATH. Yet now, 6+ years after beginning this trek, ALBER is berated by a Federal Judge for reasons beyond ALBER's control (health issues), and chastised as a person who makes a mockery of the Judicial system by exhibiting "willful or bad faith."

Whereas seasoned, well-educated Corporate Attorneys who (according to them) 'inadvertently' break laws that have been on the books for years; and it's always a mistake which they always want to rectify with a simple "I'm sorry, I won't do it again. I promise!" (paraphrased) Always looking and sounding like a child who just got caught, yet again, with their hands in the proverbial cookie jar! ALBER does not believe it's Justice to let these seasoned, well-educated Corporate Attorneys, (so-called) Officers of the Court, who have sworn to act in an ethical manner in seeing that Justice is served, off with a simple "I'm sorry." This is why the ALBER Appeal was filed: to see the punishment meted out in JUDGE WALRATH's Opinion and Orders modified so that the punishment fits the crimes.

As in the ALBER Appeal itself, ALBER implores this Court to refer the cases against MNAT, TB&F and GOLD to the United States Attorney's Office (USAO) for prosecution. Or, at the very least, to allow the ALBER Appeal to proceed, with the next indicated step either to set a deadline for the Appellees' Reply Brief, or Rule that since the Appellees did not file a reply brief in accordance with the Scheduling Order put in place by the Magistrate, that this Court Rule in favor of ALBER.

RESPECTFULLY SUBMITTED this 15th day of March, 2007,



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